

DICKSON MUGWAGWA
versus
MINISTER OF HOME AFFAIRS
and
COMMISSIONER OF POLICE

HIGH COURT OF ZIMBABWE
KAMOCHA J
HARARE 22, 23, 24 June and 24 November 2004

Civil Trial

Mrs *Muvingi*, for the plaintiff
Ms *Gatsi*, for the defendants

KAMOCHA J: The plaintiff in this matter was claiming a sum of \$300 000.00 in damages arising out of a physical assault allegedly perpetrated on him by police officers who were acting in the course and scope of their employment on 14 July 2002 at Murambinda Police Station. He also claimed interest thereon at the prescribed rate from the date of service of summons to final payment both dates being inclusive and costs of suit.

The issues agreed by the parties at a pre-trial conference before a judge were recorded as follows:-

- "(1) whether the plaintiff was assaulted by police officers while in custody at Murambinda Police Station?
- (2) whether the plaintiff suffered damages for pain and sufferings?
- (3) Whether the plaintiff is entitled to damages in the sum of \$300 000.00 as per his summons?"

The plaintiff Dickson Mugwagwa gave evidence and called three witnesses to testify. His evidence was that on 14 July 2002 he was at Madono Township where he was buying maize grain from G.M.B when two police officers arrived. They were in plain clothes. They did not know Mugwagwa although he knew them by sight. There was a gathering of people buying maize from G.M.B. The police were looking for Mugwagwa and asked for him from some known ZANU P.F. supporters and one Jacha pointed out Mugwagwa to them. The two police officers were named as Chatapura and Dube. They called the plaintiff to where they were. As soon as he got to where they were they told him that he was under arrest without telling him why they were

arresting him. He was then told to walk with them to Murambinda which was about 10 kilometers away.

As they started their journey to Murambinda he was asked to supply the names and addresses of supporters of his party when he said he was unable to do that a pistol was produced, possibly to instill fear in him. While they were still on the way he was ordered to lie down on the ground on two occasions and they beat him up with baton sticks on the buttocks and groin. The plaintiff was not told why he was being beaten up until they were about to arrive at Murambinda when the officers told him of the burning down of a house of an education officer. They alleged that the house was burnt down by M.D.C. supporters.

They arrived at Murambinda after walking for a period of two hours. On arrival he was taken to the charge office for about 10 minutes. During the ten minutes he alleged he was beaten at random. He was told that he was a member of the M.D.C. He indeed happened to be one. He was the secretary for ward 7.

Thereafter he was taken to a tent at the back of the charge office where he found about 3 members of the Support Unit and Catapura was with them. He was ordered to lie on his stomach with hands stretched forward. He complied. As he lay in that position one officer stood on his wrists while another stood on his legs and a third one pressed his head against the ground. The three officers pinned him to the ground.

While he was pinned to the ground as described, Chatapura and another belaboured him with baton sticks until he lost consciousness. He believed that one of them must have used a whip which left some weals on his body. His ordeal lasted for about 20 minutes.

At the tent there was about nine other people who had been arrested in connection with the same allegations. He said some of those people witnessed the assault on him. He was ordered to go back to the charge office but he was unable to walk and had to crawl on all four. One of the persons, who had seen the plaintiff being assaulted, called Justice Mugashu must have noticed that plaintiff had a problem and he knew that plaintiff was asthmatic. He requested that plaintiff be given hot/warm water.

The plaintiff was not informed what charge he was going to be facing. He was only informed that he would be charged with murder after 17 July 2002 when a statement was recorded from him.

The plaintiff alleged that he and others who had been arrested were not given any food from 14 July to 16 July 2002. He depended on the food from his wife.

On 19 July 2002 he was taken to court with 9 others. He alleged that 5 of the ten arrested people fainted at the court.

Their legal representative Mr Mzenda informed the presiding magistrate about the assault perpetrated by the police on the plaintiff. Plaintiff's injuries were still evident to the naked eye at that time. The injuries were concentrated on the buttocks and back. He was urinating blood. Plaintiff does not know why the magistrate did not order that he be medically examined.

From there the plaintiff and others were remanded to appear at Rusape Magistrates' court on 22 July 2002. They were finally granted bail on 2 August 2002. Their next problem was getting back home due to lack of funds. They had to walk back. The journey took them two days.

They needed medical treatment but had no money. They decided to go to their party to seek assistance. They finally were attended to by doctors Ndebele and Lovemore.

It was the witnesses' testimony that although he knew the police officers he named by sight he harboured no ill feelings against them as there was no reason for doing so. He therefore would have no reason to lie against them. To his surprise he was told why he was being linked to the murder charge. All he was told was that the murder could have been committed by M.D.C. supporters.

His house was searched when he was in police custody. His wife assaulted. They found no weapons. Instead, the police details took his plumbing toolbox with all the plumbing tools. They also took his national identity card and passport.

What was most frustrating was that he could not report the assault to the member-in-charge because he was of a like mind. He was even heard encouraging other officers to assault "vana shato" a term which was used in the area to refer to M.D.C supporters.

Under cross-examination the plaintiff revealed that the political atmosphere was tense because most of the times M.D.C. supports were subjected to assaults.

They were assaulted by ZANU P.F. supporters who seemed to be immune from arrest. The situation was exacerbated by the fact that some members of the police also used to take part in the assaults. It was the plaintiff's evidence under cross-examination that the arrest was just politically motivated. The false allegations against him could not be sustained and a year later on 20 June 2003 charges were withdrawn against him before plea and he was told that the police would proceed by way of summons.

The next witness was Mr Gibson Mudzigwa. The plaintiff's nephew. He was also arrested at his house on the same day as plaintiff - on 14 July 2002 by a police officer called Ngwasha. He was first taken to the charge office and thereafter he was taken to the tent at the back of the charge office after denying the allegations levelled against him. He was alleged to have attempted to kill an education officer Mr Mukurunge. He had been picked up three days earlier and had been assaulted. When he got to the tent he was ordered to lie down and he complied. When they started to beat him he pleaded with them, in vain, to stop beating him as they had already done so three days before. Instead Chitapura who had a jambok hit him with it until another police officer who was light in complexion intervened. By the time the assault stopped he had already sustained injuries on his back and left leg.

After the assault on him had just stopped he saw the plaintiff being taken out of the charge office to the tent where he was first hit by three members of the riot squad. Chatapura joined the three in assaulting plaintiff who was at that stage lying prostrate. One officer stood on the plaintiff's hands while one stood on his neck pinning the plaintiff's head to the ground. One of them held the plaintiff's legs. While plaintiff was pinned to the ground in the matter described. Chitapura belaboured him with a jambok.

As the assault was taking place the officer-in-charge came out of the charge office and encouraged the officers to "rovai vana shato" translated "hit the pythons". The assault only ceased when the plaintiff became motionless. According to the witness the assault was sustained because thereafter plaintiff was unable to walk and had to crawl to the charge office when ordered to go there.

While in the charge office some officers asked why he was in the condition in which he was. He was sweating profusely and he said he was feeling too hot. Plaintiff is asthmatic. One justice who knew of the plaintiff's condition requested that they give him warm water, which they did.

The witness told the court that there were ten suspects altogether who had been picked up in connection with the same matter. No statements were recorded from them until 17 July 2002. Thereafter they were taken to court on 19 July 2002 where the assaults were reported to the presiding magistrate. He said their lawyer Mr Mzenda told the court about their complaints.

The witness was emphatic that the plaintiff was not assaulted by his political opponents but he was assaulted by the police in his presence. The witness saw no point in reporting the assaults to the police when in fact the assaults were perpetrated by them.

The witness explained that the name "shato" in this context referred to those who advocated for change i.e. the M.D.C. He himself is an M.D.C. supporter while Mukurunge is a ZANU P.F. supporter.

In conclusion the witness told the court that he did not receive any medical treatment for 2 weeks until he and others were assisted by some human Rights organisations. He also was suing the police for what they did to him.

Under cross-examination the witness stated, like the plaintiff, that members of their party were being assaulted by ZANU P.F. supporters who could not be arrested. But the police would arrest the victims instead. When asked how one police officer intervened to stop the assault on him he told the court that the other policeman stopped them by saying, "I assaulted this person a day before yesterday." It was only then that they stopped and led him to the entrance to the charge office. He had been picked up on 12 July 2002 and was ordered to indicate supporters of his party since he was a youth chairman.

When asked by court if there were any clashes between ZANU PF and MDC in the area he said he was aware of one incident when supporters of his party were attacked on their way to a rally. They were caught unaware and were injured.

This witness gave his evidence clearly and in a straightforward manner. He corroborates the plaintiff's evidence on all material points. He saw plaintiff being pinned to the ground. He saw Chatapura at the tent and taking part in the assault. He confirm that plaintiff became motionless and had to be given warm water.

The next witness was Levison George Gwena. His evidence was that he was arrested on 18 July 2002 and was assaulted by the police. He did not see plaintiff

being assaulted. He however met him in the cells that evening. Plaintiff was in pain and complained about the assaults perpetrated on him.

The next day 19 July 2002 the witness, plaintiff and eight others were taken to court. They were being represented by Mr Mzenda whom they had told about their treatment at the hands of the police. He too told the court that it was pointless to report the assaults to the police when the police themselves were the culprits.

This witness did not know Mukurunge at all but he learnt that he was a ZANU PF supporter while the witness was an MDC supporter.

The witness confirms the evidence of the other witness that they did not receive any medical treatment while in custody.

In cross-examination the witness said the political climate in the area was far from being normal because his party's supporters were allegedly being assaulted by ZANU PF supporters and strangely also by the police. Further, when MDC supporters went to report to the police after the attacks they were arrested instead. The police were saying the victims should not support their party. It was suggested to the witness that he should have reported to any other police station. The witness maintained that in his view it would not have assisted because the culprits were their colleagues. He confirms the plaintiff's story that they were not given warrants at Rusape. They had to walk back home.

Dr Frances Ann Lovemore was the last plaintiff's witness. She has 14 years experience. On 7 August 2002 she had occasion to examine the plaintiff who complained of pain on his buttocks and on the lower part of his body. She then physically examined him looking for the cause of the pain that he was complaining of.

Her findings were that plaintiff was tender over the lower back and both buttocks. But there were no visible marks or bruises found. He was also tender on the soles of his feet but with no bruises or marks seen. The doctor said the absence of bruises or marks was consistent with what she observed in the light of the time lapse of 3 weeks. Since the plaintiff's general health was poor at the time of examination she referred him for kidney infection check, urine test, and blood count. The result was that the urine test was normal and so was blood count. She then concluded that plaintiff was unlikely to have long-term injuries. In her opinion the tenderness was probably caused by a blunt instrument. It was also her view that for

the tenderness to remain for a period of three weeks the assault must have been of a serious nature.

The defence case opened after the doctor had finished giving her evidence. The defendants are generally denying the assault charges. They contend that if the plaintiff had been assaulted at all he would have reported to the authorities.

The first witness for the defence was Superintendent Norest Henry Muyambo who has 20 years experience. He was the member in charge at Murambinda during the relevant time. It was his evidence that the political atmosphere at Murambinda was quite tense because MDC activists were targeting ZANU PF members and their homesteads. They burnt down the house of a war veteran called Mukuwe. One Brighton's house was also burnt down. Homesteads of councillors Dube and Jakanya were also burnt down. The latest house which had been burnt down was that of Vengesai Mukurunge the district education officer of the area. It was a government house and was destroyed to ashes.

The witness told the court that ZANU PF and war veterans resolved to retaliate. ZANU PF youths assaulted Chiripanyanga because he was suspected of being involved in the petrol bombing of Mukurunge's house. Chiripanyanga ran to the police station to report. On arrival he was arrested and detained together with other MDC supporters who had been arrested that same day. His evidence was that Chiripanyanga was assaulted on 15 July 2002.

On 12 July 2002 he had received reports that MDC supporters had been seen roving around Mukurunge's house.

The witness told the court that the plaintiff was arrested on 16 July 2002, which was a Tuesday, by members of the Support Unit. He claimed that they arrested him from his homestead and was taken to the station that same day just before lunch. The witness said he suspected that plaintiff was arrested in connection with the petrol bombing of Mukurunge's house. His suspicion was based on the information he had received from certain people and informers.

The officer claimed that the police did not assault anybody. He did not see them assaulting the plaintiff. In any case, so his evidence went, police are apolitical. They therefore could not assault supporters of a political party. He denied ever encouraging his subordinates to hit "vana shato". He said if the plaintiff or any body had been assaulted by the police they should have reported to him but no one did.

In conclusion the witness emphasized that the police made their first arrest on Monday 15 July 2002. The plaintiff was arrested on Tuesday 16 July 2002. Plaintiff was taken to court on Wednesday 17 July 2002 by a member of the CID called Cst Chari. He was remanded in custody and was only taken to Rusape on Friday 19 July 2002.

The witness was subjected to a thorough cross-examination from which he came out very badly bruised. He could not explain why the detention book did not reflect that plaintiff was detained on 16 July 2002 the date he alleged plaintiff was arrested. He sought to explain that by alleging that plaintiff was just kept at the charge office without details of him being entered into the detention book. A warned and cautioned statement was even recorded from the plaintiff before any details relating to him were entered into the detention book. That, of course, cannot be true.

When it was put to him that the detention book and the defendant's plea and summary of evidence all reflected that the plaintiff was arrested on 17 July, 2002 he then told the court that the wrong information could have come from the Police General Head Quarters. He maintained that the warned and cautioned statement was recorded on 16 July, 2002 the day plaintiff was arrested. He was asking the court to accept what he was saying from memory instead of what was recorded but his memory seemed to betray him badly.

The witness also came up with an incredible story under cross-examination. He told the court that some suspects were arrested and were just kept at the charge office with no details relating to them being recorded. What that means then is that the witness's story about the plaintiff being arrested cannot be relied upon since plaintiff himself said he was arrested on Sunday by Chatapura and Dube. He was likely to have been kept at the charge office until his details were recorded in the detention book on 17 July 2002. The detention book contains inaccurate information. It reflects that plaintiff was arrested by Constable Chari when in fact that was not the case.

The witness had alleged in his evidence-in-chief that plaintiff was arrested at his homestead when it was put to him that plaintiff was in fact arrested at Madono Township he then changed his story and stated that plaintiff's home was near Madono Township.

While he agreed that there were no clashes between ZANU PF and MDC supporters he still stated that plaintiff could have been assaulted by his political opponents. That is difficult to believe because after his arrest political opponents would not have had access to him as he was in police custody.

He was unable to explain satisfactorily why the witness said he was encouraging his subordinates to assault the MDC supporters. The witness appeared to be exaggerating things and suppressing the truth. When asked how many properties belonging to supporters of ZANU PF were burnt down he said he could not recall the number since they were so many. He had forgotten that he had earlier on, in his evidence, listed the properties as being five. The witness was not worth to be believed.

The next witness was detective sergeant Manos Masiyandima who has been in the force for 8 years. He is stationed in Mutare. On 16 July, 2002 he went to Murambinda after receiving a report of the burning down of Mukurunge's house. On arrival he interviewed the plaintiff. He said he did not detect any signs of injuries on plaintiff. He himself did not assault plaintiff and neither did he complain to him of any assault being perpetrated on him. He said he recorded a statement from the plaintiff that same day. Plaintiff denied the charge of murder which was being preferred against him. The next day 17 July 2002 he took the plaintiff to court.

Under cross-examination the witness accepted that he did not expect the plaintiff to have reported the assault to him. He did not ask the plaintiff how other police officers treated him. The witness also contradicts what is contained in the detention book, plea and summary of evidence. These documents reflect that plaintiff was only arrested on 17 July 2002. He wanted the court to believe that plaintiff did not complain to the presiding magistrate about the assault when he himself was not in court. He therefore could not have known about events that took place in his absence. The witness did not take the defence case any further. He claimed to have taken plaintiff to court yet Muyambo said plaintiff was taken to court by Constable Chari.

Constable Bimbikayi Chatapura denied being involved in the apprehension of the plaintiff. He claimed that he (plaintiff) was arrested by members of the support unit. He denied being at Madono Growth Point with Dube. He denied assaulting the plaintiff with Dube and denied producing a pistol. He did not even see him being

assaulted at any stage by any police officer. He claimed to have no knowledge of him being taken to the tent. The witness stressed that plaintiff was arrested by members of the support unit on 16 July 2002 and was taken to court the day 17 July 2002. In conclusion he alleged that plaintiff mentioned him as one of the culprits just to add some weight to his claim.

He alleged that on the day plaintiff was arrested he was on standby at the charge office and he first saw the plaintiff when he was brought to the charge office by members of the support unit.

When asked why plaintiff's details were not entered into the detention book he said it may have been oversight on their part. The witness could not explain satisfactorily why the plaintiff and Gibson Mudzigwa gave detailed accounts of how he assaulted the plaintiff with the assistance of about three other officers. While the witness was in the witness's stand, he was very uneasy and clearly appeared to be untruthful. He was not worth to be believed.

The plaintiff left the court with the impression that he was telling the truth. His account of what transpired was given in clear and straightforward manner. He was corroborated by Gibson Mudzingwa on all material points like for instance the point that plaintiff was made to lie prostrate while three officers pinned him to the ground and Chatapura belaboured him with a jambok until he became motionless. The officer in charge Muyambo agreed that there were no clashes between ZANU PF supporters and MDC ones. So the suggestion that he could have been injured by his political opponents is simply without foundation.

While the defence case was completely confused as to when, where, and by whom the plaintiff was arrested, plaintiff is quite clear on that issue. He said he was arrested on 14 July 2002 by Chitapura and Dube at Madono Growth Point. While Muyambo says he was arrested at his homestead by members of support unit on 16 July 2002. The plea, synopsis of evidence and the detention book say that he was arrested on 17 July 2002. Detective Sergeant Masiyandima said he was arrested on 16 July 2002. The detention book reflects that he was arrested by Constable Chari. The defendant's case on that point is so confused because the officers who testified were clearly trying to suppress the truth which is not an easy thing to do. They were all being untruthful. Their false evidence must therefore be rejected.

The suggestion that plaintiff should have reported to some other police officers does not seem to make sense when regard is had to the fact that plaintiff was being assaulted by members of the police force at a police station and the officer in charge was encouraging the beatings. One cannot realistically expect the victim to report to another police officer.

Things seemed to have been terribly wrong in that area at that particular time because the suspects complained in court about the assaults and yet they were not referred to a doctor for examination. When they were released they were not given bus warrants to return to their homes which were far from Rusape. They had to walk back a journey lasting two days.

This court has no hesitation whatsoever in finding as a fact that the plaintiff was a truthful witness. His well given evidence is acceptable. In the result I find that he was assaulted by police in the manner he described and is entitled to the damages claimed.

I would therefore order as follows:

It is ordered that the defendants pay to the plaintiff jointly and severally the one paying the other to be absolved the sum of:

- (a) \$210 000 being damages for pain and suffering;
- (b) \$90 000 being punitive damages;
- (c) interest on the above total sum at the prescribed rate from the date of service of summons to the final payment; and
- (d) costs of suit.

Zimbabwe Human Rights NGO Forum, plaintiff's legal practitioners

Civil Division of the Attorney-General's Office, defendant's legal practitioners